



April 13, 2000

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2000-1457

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 134334.

The Texas Department of Criminal Justice (the "department") received a request for all information relating to a particular job posting, including "the questions and responses and the qualifications of the applicants." You claim that a portion of the requested information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.¹

Section 552.122 of the Government Code excepts from required public disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. The question of whether specific information falls within the

¹We assume that the "exemplar" that you submitted to this office is truly representative of the requested information as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This letter ruling does not address, and therefore does not authorize the department to withhold, any other requested information that is substantially different from the information contained in the submitted exemplar.

ambit of section 552.122(b) must be determined on a case-by-case basis. *See* ORD 626 at 6. Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of further examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976).

You seek to withhold, as “test items,” standardized questions and recommended and actual responses contained in the submitted interview documentation form. You inform us that the department’s employment selection process includes structured interviews in which all interviewees are asked the same specific questions. You explain that these questions are intended to test the job applicant’s technical expertise. You inform us that the same questions and model responses are used repetitively in filling a particular position. You assert that public disclosure of these questions and the recommended and actual responses would undermine the fairness and effectiveness of the employment process. Based on your representations and our review of the submitted information, we conclude that the standardized questions and recommended responses contained in the submitted interview form are excepted from disclosure under section 552.122 of the Government Code. We do not believe, however, that disclosure of the actual answers that you submitted would compromise the effectiveness of future employment interviews. We therefore conclude that the actual answers are not excepted from public disclosure and must be released. *But see* Open Records Decision No. 626 at 8 (1994) (stating that when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122); Attorney General Opinion JM-640 at 3 (1987).²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

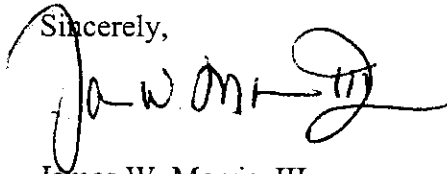
²The actual answers contained in the interview form that you submitted are barely legible. We would recommend that in the future you submit documents that are susceptible of review.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J W Morris III", with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 134334

Encl. Submitted documents

cc: Ms. Stacey Ochoa
1237 Heather Lane
Angleton, Texas 77515
(w/o enclosures)